

1 AN ACT relating to the tracking of drug convictions.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 218A.202 is amended to read as follows:

4 (1) The Cabinet for Health and Family Services shall establish an electronic system for  
5 monitoring Schedules II, III, IV, and V controlled substances that are dispensed  
6 within the Commonwealth by a practitioner or pharmacist or dispensed to an  
7 address within the Commonwealth by a pharmacy that has obtained a license,  
8 permit, or other authorization to operate from the Kentucky Board of Pharmacy.  
9 The cabinet may contract for the design, upgrade, or operation of this system if the  
10 contract preserves all of the rights, privileges, and protections guaranteed to  
11 Kentucky citizens under this chapter and the contract requires that all other aspects  
12 of the system be operated in conformity with the requirements of this or any other  
13 applicable state or federal law.

14 (2) A practitioner or a pharmacist authorized to prescribe or dispense controlled  
15 substances to humans shall register with the cabinet to use the system provided for  
16 in this section and shall maintain such registration continuously during the  
17 practitioner's or pharmacist's term of licensure and shall not have to pay a fee or tax  
18 specifically dedicated to the operation of the system.

19 (3) Every dispenser within the Commonwealth who is licensed, permitted, or otherwise  
20 authorized to prescribe or dispense a controlled substance to a person in Kentucky  
21 shall report to the Cabinet for Health and Family Services the data required by this  
22 section, except that reporting shall not be required for:

23 (a) A drug administered directly to a patient in a hospital, a resident of a health  
24 care facility licensed under KRS Chapter 216B, a resident of a child-caring  
25 facility as defined by KRS 199.011, or an individual in a jail, correctional  
26 facility, or juvenile detention facility;

27 (b) A drug, other than any Schedule II controlled substance or a Schedule III

- 1 controlled substance containing hydrocodone, dispensed by a practitioner at a  
2 facility licensed by the cabinet, provided that the quantity dispensed is limited  
3 to an amount adequate to treat the patient for a maximum of forty-eight (48)  
4 hours; or
- 5 (c) A drug administered or dispensed to a research subject enrolled in a research  
6 protocol approved by an institutional review board that has an active  
7 federalwide assurance number from the United States Department of Health  
8 and Human Services, Office for Human Research Protections, where the  
9 research involves single, double, or triple blind drug administration or is  
10 additionally covered by a certificate of confidentiality from the National  
11 Institutes of Health.
- 12 (4) Data for each controlled substance that is dispensed shall include but not be limited  
13 to the following:
- 14 (a) Patient identifier;  
15 (b) National drug code of the drug dispensed;  
16 (c) Date of dispensing;  
17 (d) Quantity dispensed;  
18 (e) Prescriber; and  
19 (f) Dispenser.
- 20 (5) The data shall be provided in the electronic format specified by the Cabinet for  
21 Health and Family Services unless a waiver has been granted by the cabinet to an  
22 individual dispenser. The cabinet shall establish acceptable error tolerance rates for  
23 data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or  
24 inaccurate data shall be corrected upon notification by the cabinet if the dispenser  
25 exceeds these error tolerance rates.
- 26 (6) The Cabinet for Health and Family Services shall only disclose data to persons and  
27 entities authorized to receive that data under this section. Disclosure to any other

1 person or entity, including disclosure in the context of a civil action where the  
2 disclosure is sought either for the purpose of discovery or for evidence, is prohibited  
3 unless specifically authorized by this section. The Cabinet for Health and Family  
4 Services shall be authorized to provide data to:

5 (a) A designated representative of a board responsible for the licensure,  
6 regulation, or discipline of practitioners, pharmacists, or other person who is  
7 authorized to prescribe, administer, or dispense controlled substances and who  
8 is involved in a bona fide specific investigation involving a designated person;

9 (b) Employees of the Office of the Inspector General of the Cabinet for Health  
10 and Family Services who have successfully completed training for the  
11 electronic system and who have been approved to use the system, Kentucky  
12 Commonwealth's attorneys and assistant Commonwealth's attorneys, county  
13 attorneys and assistant county attorneys, a peace officer certified pursuant to  
14 KRS 15.380 to 15.404, a certified or full-time peace officer of another state,  
15 or a federal peace officer whose duty is to enforce the laws of this  
16 Commonwealth, of another state, or of the United States relating to drugs and  
17 who is engaged in a bona fide specific investigation involving a designated  
18 person;

19 (c) A state-operated Medicaid program in conformity with subsection (7) of this  
20 section;

21 (d) A properly convened grand jury pursuant to a subpoena properly issued for the  
22 records;

23 (e) A practitioner or pharmacist, or employee of the practitioner's or pharmacist's  
24 practice acting under the specific direction of the practitioner or pharmacist,  
25 who requests information and certifies that the requested information is for the  
26 purpose of:

27 1. Providing medical or pharmaceutical treatment to a bona fide current or

- 1 prospective patient; or
- 2 2. Reviewing and assessing the individual prescribing or dispensing
- 3 patterns of the practitioner or pharmacist or to determine the accuracy
- 4 and completeness of information contained in the monitoring system;
- 5 (f) The chief medical officer of a hospital or long-term-care facility, an employee
- 6 of the hospital or long-term-care facility as designated by the chief medical
- 7 officer and who is working under his or her specific direction, or a physician
- 8 designee if the hospital or facility has no chief medical officer, if the officer,
- 9 employee, or designee certifies that the requested information is for the
- 10 purpose of providing medical or pharmaceutical treatment to a bona fide
- 11 current or prospective patient or resident in the hospital or facility;
- 12 (g) In addition to the purposes authorized under paragraph (a) of this subsection,
- 13 the Kentucky Board of Medical Licensure, for any physician who is:
- 14 1. Associated in a partnership or other business entity with a physician who
- 15 is already under investigation by the Board of Medical Licensure for
- 16 improper prescribing or dispensing practices;
- 17 2. In a designated geographic area for which a trend report indicates a
- 18 substantial likelihood that inappropriate prescribing or dispensing may
- 19 be occurring; or
- 20 3. In a designated geographic area for which a report on another physician
- 21 in that area indicates a substantial likelihood that inappropriate
- 22 prescribing or dispensing may be occurring in that area;
- 23 (h) In addition to the purposes authorized under paragraph (a) of this subsection,
- 24 the Kentucky Board of Nursing, for any advanced practice registered nurse
- 25 who is:
- 26 1. Associated in a partnership or other business entity with a physician who
- 27 is already under investigation by the Kentucky Board of Medical

- 1                   Licensure for improper prescribing or dispensing practices;
- 2                   2.   Associated in a partnership or other business entity with an advanced
- 3                   practice registered nurse who is already under investigation by the Board
- 4                   of Nursing for improper prescribing practices;
- 5                   3.   In a designated geographic area for which a trend report indicates a
- 6                   substantial likelihood that inappropriate prescribing or dispensing may
- 7                   be occurring; or
- 8                   4.   In a designated geographic area for which a report on a physician or
- 9                   another advanced practice registered nurse in that area indicates a
- 10                  substantial likelihood that inappropriate prescribing or dispensing may
- 11                  be occurring in that area;
- 12                  (i)   A judge or a probation or parole officer administering a diversion or probation
- 13                  program of a criminal defendant arising out of a violation of this chapter or of
- 14                  a criminal defendant who is documented by the court as a substance abuser
- 15                  who is eligible to participate in a court-ordered drug diversion or probation
- 16                  program; or
- 17                  (j)   A medical examiner engaged in a death investigation pursuant to KRS 72.026.
- 18                  (7)   The Department for Medicaid Services shall use any data or reports from the system
- 19                  for the purpose of identifying Medicaid providers or recipients whose prescribing,
- 20                  dispensing, or usage of controlled substances may be:
- 21                  (a)   Appropriately managed by a single outpatient pharmacy or primary care
- 22                  physician; or
- 23                  (b)   Indicative of improper, inappropriate, or illegal prescribing or dispensing
- 24                  practices by a practitioner or drug seeking by a Medicaid recipient.
- 25                  (8)   A person who receives data or any report of the system from the cabinet shall not
- 26                  provide it to any other person or entity except as provided in this section, in another
- 27                  statute, or by order of a court of competent jurisdiction and only to a person or

1 entity authorized to receive the data or the report under this section, except that:

2 (a) A person specified in subsection (6)(b) of this section who is authorized to  
3 receive data or a report may share that information with any other persons  
4 specified in subsection (6)(b) of this section authorized to receive data or a  
5 report if the persons specified in subsection (6)(b) of this section are working  
6 on a bona fide specific investigation involving a designated person. Both the  
7 person providing and the person receiving the data or report under this  
8 paragraph shall document in writing each person to whom the data or report  
9 has been given or received and the day, month, and year that the data or report  
10 has been given or received. This document shall be maintained in a file by  
11 each agency engaged in the investigation;

12 (b) A representative of the Department for Medicaid Services may share data or  
13 reports regarding overutilization by Medicaid recipients with a board  
14 designated in subsection (6)(a) of this section, or with a law enforcement  
15 officer designated in subsection (6)(b) of this section;

16 (c) The Department for Medicaid Services may submit the data as evidence in an  
17 administrative hearing held in accordance with KRS Chapter 13B;

18 (d) If a state licensing board as defined in KRS 218A.205 initiates formal  
19 disciplinary proceedings against a licensee, and data obtained by the board is  
20 relevant to the charges, the board may provide the data to the licensee and his  
21 or her counsel, as part of the notice process required by KRS 13B.050, and  
22 admit the data as evidence in an administrative hearing conducted pursuant to  
23 KRS Chapter 13B, with the board and licensee taking all necessary steps to  
24 prevent further disclosure of the data; and

25 (e) A practitioner, pharmacist, or employee who obtains data under subsection  
26 (6)(e) of this section may share the report with the patient or person authorized  
27 to act on the patient's behalf and place the report in the patient's medical

1 record, with that individual report then being deemed a medical record subject  
2 to disclosure on the same terms and conditions as an ordinary medical record  
3 in lieu of the disclosure restrictions otherwise imposed by this section.

4 (9) The Cabinet for Health and Family Services, all peace officers specified in  
5 subsection (6)(b) of this section, all officers of the court, and all regulatory agencies  
6 and officers, in using the data for investigative or prosecution purposes, shall  
7 consider the nature of the prescriber's and dispenser's practice and the condition for  
8 which the patient is being treated.

9 (10) The data and any report obtained therefrom shall not be a public record, except that  
10 the Department for Medicaid Services may submit the data as evidence in an  
11 administrative hearing held in accordance with KRS Chapter 13B.

12 (11) Intentional failure by a dispenser to transmit data to the cabinet as required by  
13 subsection (3), (4), or (5) of this section shall be a Class B misdemeanor for the first  
14 offense and a Class A misdemeanor for each subsequent offense.

15 (12) Intentional disclosure of transmitted data to a person not authorized by subsection  
16 (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining  
17 information under this section not relating to a bona fide specific investigation, shall  
18 be a Class B misdemeanor for the first offense and a Class A misdemeanor for each  
19 subsequent offense.

20 (13) (a) The Commonwealth Office of Technology, in consultation with the Cabinet  
21 for Health and Family Services, may submit an application to the United  
22 States Department of Justice for a drug diversion grant to fund a pilot or  
23 continuing project to study, create, or maintain a real-time electronic  
24 monitoring system for Schedules II, III, IV, and V controlled substances.

25 (b) The pilot project shall:

26 1. Be conducted in two (2) rural counties that have an interactive real-time  
27 electronic information system in place for monitoring patient utilization

1 of health and social services through a federally funded community  
2 access program; and

3 2. Study the use of an interactive system that includes a relational data base  
4 with query capability.

5 (c) Funding to create or maintain a real-time electronic monitoring system for  
6 Schedules II, III, IV, and V controlled substances may be sought for a  
7 statewide system or for a system covering any geographic portion or portions  
8 of the state.

9 (14) Provisions in this section that relate to data collection, disclosure, access, and  
10 penalties shall apply to the pilot project authorized under subsection (13) of this  
11 section.

12 (15) The Cabinet for Health and Family Services may, by promulgating an  
13 administrative regulation, limit the length of time that data remain in the electronic  
14 system. Any data removed from the system shall be archived and subject to retrieval  
15 within a reasonable time after a request from a person authorized to review data  
16 under this section.

17 (16) (a) The Cabinet for Health and Family Services shall work with each board  
18 responsible for the licensure, regulation, or discipline of practitioners,  
19 pharmacists, or other persons who are authorized to prescribe, administer, or  
20 dispense controlled substances for the development of a continuing education  
21 program about the purposes and uses of the electronic system for monitoring  
22 established in this section.

23 (b) The cabinet shall work with the Kentucky Bar Association for the  
24 development of a continuing education program for attorneys about the  
25 purposes and uses of the electronic system for monitoring established in this  
26 section.

27 (c) The cabinet shall work with the Justice and Public Safety Cabinet for the



1 development of a continuing education program for law enforcement officers  
2 about the purposes and uses of the electronic system for monitoring  
3 established in this section.

4 (17) If the cabinet becomes aware of a prescriber's or dispenser's failure to comply with  
5 this section, the cabinet shall notify the licensing board or agency responsible for  
6 licensing the prescriber or dispenser. The licensing board shall treat the notification  
7 as a complaint against the licensee.

8 (18) The cabinet shall promulgate administrative regulations to implement the provisions  
9 of this section. Included in these administrative regulations shall be:

10 (a) An error resolution process allowing a patient to whom a report had been  
11 disclosed under subsection (8) of this section to request the correction of  
12 inaccurate information contained in the system relating to that patient; and

13 (b) Beginning July 1, 2013, a requirement that data be reported to the system  
14 under subsection (3) of this section within one (1) day of dispensing.

15 (19) Before July 1, 2018, the Administrative Office of the Courts shall forward data  
16 regarding any felony or Class A misdemeanor conviction that involves the  
17 trafficking or possession of a controlled substance or other prohibited acts under  
18 KRS Chapter 218A for the previous five (5) calendar years to the cabinet for  
19 inclusion in the electronic monitoring system established under this section. On  
20 or after July 1, 2018, such data shall be forwarded by the Administrative Office of  
21 the Courts to the cabinet on a continuing basis. The cabinet shall incorporate the  
22 data received into the system so that a query by patient name indicates any prior  
23 drug conviction.